

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PERCY LAVAE BACON,

Plaintiff,

v.

BRIAN WILLIAMS, et al.,

Defendants.

2:16-cv-00101-RFB-CWH

SCREENING ORDER

I. DISCUSSION

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, a motion to proceed *in forma pauperis*, a motion for the appointment of counsel, and a motion to extend prison copy work limit. (ECF No. 1-2, 1, 2, 3). However, on at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

¹ See *Bacon v. Laswell*, 2:09-cv-02058-PMP-PAL (district court dismissed the case for failure to state a claim, and appellate court dismissed appeal as frivolous); *Bacon v. State of Nevada*, 2:10-cv-01451-KJD-LRL (same).

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2 In his complaint, Plaintiff appears to allege his due process rights were violated by a
3 "phantom rule infraction" filed against him in retaliation. (*See generally* Dkt. no. 1-1). The
4 Court finds that these allegations fail to plausibly allege that Plaintiff is in imminent danger of
5 serious physical injury. *See Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007)
6 (holding that the exception to § 1915(g) applies if the complaint makes a plausible allegation
7 that the prisoner faced imminent danger of serious physical injury at the time of filing). As
8 such, Plaintiff must pre-pay the \$400.00 filing fee in full.

9 **II. CONCLUSION**

10 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed *in*
11 *forma pauperis* (ECF No. 1) is DENIED.

12 IT IS FURTHER ORDERED that this action will be DISMISSED without prejudice unless
13 Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this order.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff two copies
15 of this order. Plaintiff shall make the necessary arrangements to have one copy of this order
16 attached to the check paying the filing fee.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall retain the complaint.

18 IT IS FURTHER ORDERED that a decision on Plaintiff's motion for the appointment of
19 counsel (ECF No. 2) and motion to extend prison copywork limit (ECF No. 3) shall be
20 DEFERRED until the matter of the filing fee is resolved.

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22 DATED: This 23rd day of August, 2016.

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25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE
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